

HB 320 -- Unlawful Discriminatory Employment Practices

Sponsor: Elmer

This bill changes the laws regarding unlawful discriminatory employment practices under the human rights laws and establishes the Whistleblower's Protection Act.

UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES UNDER THE HUMAN RIGHTS LAWS

The bill:

(1) Specifies that the term "because" or "because of," as it relates to a decision or action, means that the protected criterion was a motivating factor unless the decision or action has an adverse impact on the protected criterion, in which case, courts must rely heavily on judicial interpretation of specified federal civil rights and employment discrimination laws;

(2) Revises the term "employer" by specifying that it is a person engaged in an industry affecting commerce who has six or more employees for each working day in each of 20 or more weeks in the current or preceding year and does not include an individual employed by an employer; certain tax-exempt private membership clubs, excluding labor organizations; or corporations and associations owned and operated by religious or sectarian groups;

(3) Specifies that any party to specified unlawful discriminatory practice actions may demand a trial by jury;

(4) Specifies that an award of damages may include all future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and punitive damages;

(5) Specifies that the amount of damages awarded for each plaintiff cannot exceed the amount of the actual back pay plus interest, other equitable relief, court costs, reasonable attorney fees, and other damages of up to \$50,000 in the case of an employer with six to 100 employees in each of 20 or more weeks in the current or preceding calendar year; up to \$100,000 for an employer with 101 to 200 employees; up to \$200,000 for an employer with 201 to 500 employees; and up to \$300,000 for an employer with more than 500 employees. The limits must increase and decrease in the same amounts as any corresponding limits are changed in Section 42 U.S.C. 1981a(b) (3);

(6) Prohibits punitive damages from being awarded against the

state or any of its political subdivisions except for claims for discriminatory housing practices authorized in Section 213.040, RSMo; and

(7) Specifies that the provisions regarding damage awards do not apply to an alleged violation of Section 213.040, unlawful housing practices; Section 213.045, discrimination in commercial real estate loans; or Section 213.050, discrimination in real estate sales and rental organizations. The provisions will apply, however, to an alleged violation of Section 213.070, other specified unlawful discriminatory practices by an employer.

WHISTLEBLOWER'S PROTECTION ACT

The Whistleblower's Protection Act is established, which places in statute existing common law exceptions to the at-will employment doctrine, making it an unlawful employment practice for an employer to discharge or retaliate against an individual who is a protected person. The bill:

(1) Specifies that the term "because" or "because of," as it relates to a decision or action, means the person's status as a protected person was a motivating factor;

(2) Specifies that the term "employer" means a person engaged in an industry affecting commerce who has more than five employees for each working day in each of 20 or more calendar weeks in the current or preceding year and must include the state or any political or civil subdivision but does not include an individual employed by an employer; certain tax-exempt private membership clubs, excluding labor organizations; or corporations and associations owned and operated by religious or sectarian groups;

(3) Specifies that "proper authorities" means a governmental or law enforcement agency or an officer or the employee's human resources representative employed by the employer;

(4) Specifies that "protected person" means a person who has reported to the proper authorities an unlawful act of the employer or its agent or serious misconduct of the employer or its agent that violates a clear mandate of public policy as articulated in a constitutional provision, regulation promulgated under statute, or rule created by a governmental entity; a person who has refused to carry out a directive issued by the employer or its agent that if completed would be a violation of the law; or a person who engages in conduct otherwise protected by statute or regulation;

(5) Specifies that these provisions are intended to codify the existing exceptions to the at-will employment doctrine and to limit

their future expansion by the courts. These provisions must provide the exclusive remedy for any and all unlawful employment practices specified in the act and voids any common law causes of action to the contrary;

(6) Specifies that a protected person aggrieved by a violation of these provisions must have a private right of action for damages which may be filed in a circuit court of competent jurisdiction. The Missouri Human Rights Commission will not have jurisdiction to review or adjudicate claims brought under these provisions. The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order and may award actual and punitive damages to the plaintiff;

(7) Specifies that any party to an action under these provisions may demand a trial by jury;

(8) Specifies that the court may award the plaintiff actual and punitive damages. An award of damages may include all future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, other nonpecuniary losses, and punitive damages. The amount of all damages awarded for each complainant cannot exceed the amount of the actual back pay plus interest, other equitable relief, and other damages of up to \$50,000 in the case of an employer with six to 100 employees in each of 20 or more weeks in the current or preceding calendar year; up to \$100,000 for an employer with 101 to 200 employees; up to \$200,000 for an employer with 201 to 500 employees; and up to \$300,000 for an employer with more than 500 employees; and

(9) Specifies that the damage award limits will increase or decrease in the same amounts as any corresponding limits are changed in Section 42 U.S.C. 1981a(b)(3).